

CABINET	AGENDA ITEM No. 5
11 JUNE 2018	PUBLIC REPORT

Report of:	Annette Joyce, Service Director of Environment and Economy	
Cabinet Member(s) responsible:	Councillor John Holdich, Leader of Peterborough City Council Councillor Marco Cereste Cabinet Member for Waste and Street Scene	
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PROPOSAL TO EXPLORE THE OPTION OF FORMING A LOCAL AUTHORITY TRADING COMPANY

RECOMMENDATIONS	
FROM: Annette Joyce, Service Director of Environment & Economy	Deadline date: N/A
<p>It is recommended that Cabinet note:</p> <ol style="list-style-type: none"> 1. That the Cabinet Member for Waste and Street Scene, together with the Service Director of Environment and Economy are investigating the establishment of a Local Authority Trading Company (LATCo) for services currently performed under the EMS contract by Amey. 2. That the arrangements in place for these services as set out in paragraph 4.4 are paused whilst such an investigation takes place. 	

1. ORIGIN OF REPORT

- 1.1 The Medium Term Financial Strategy (MTFS) 2017/18 – 2026/27 presented to Council on 8 March 2017 included a proposal for the Council’s current contract for services with Enterprise Managed Services Limited (EMS) to terminate by mutual agreement and for the Council to consider alternative ways of providing those services.

2. PURPOSE AND REASON FOR REPORT

- 2.1 At Annual Council the Leader of the Council made an announcement about the setting up of a LATCo to provide waste collection and street cleansing services. This report brings this matter formally to the attention of Cabinet by way of an update as a result of that announcement.

3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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4. BACKGROUND AND KEY ISSUES

4.1 The current contract with EMS was awarded after an OJEU compliant procurement process in 2011 and was to run for 23 years. Services covered by this contract included Street Cleansing, Refuse Collections, Grounds and Tree Maintenance, Parks and Open Spaces, Building Maintenance, Building Cleaning and Home to School Transport Services. EMS were brought out by AMEY who have fulfilled the contract since.

4.2 During 2016 and 2017 there were several operational challenges in fulfilling the contract and it was recognised by both the Council and Amey that the contract was no longer fit for purpose. The contract was procured prior to the significant financial challenges that have resulted from Government's austerity cuts alongside increased demands on services.

4.3 In the autumn of 2017 an options appraisal was carried out by the Council with consultants as a result of the recognition of the matters set out in paragraph 4.2 above. A summary of some of the key options explored was detailed in the Cabinet report of 18 December 2017. These included:

- **Continuing with the existing contract** - Amey had advised that they were not willing to carry on with the existing contract at the current value, which both parties have acknowledged was no longer fit for purpose.
- **Transfer the majority of services into a Joint Venture company with the Norse Group** - It was originally proposed that the Council would transfer services in the EMS contract to a new joint venture company with Norse Commercial Services. However, given the scope of services and in the absence of a procurement process it has not been possible to demonstrate that this represents the best value for money for the Council or that such a solution would be affordable.
- **Bring services back in house** - The report detailed that the in house option was highly unlikely to be an affordable option.
- **Retender in separate packaged contracts**

4.4 As a result of this report authority to terminate the contract was approved by Cabinet on 18 December 2017, as follows:

"Agree for the Cabinet Member for Waste and Street Scene to approve the award of replacement contracts or arrangement of alternative provisions for all services currently provided under the Enterprise Managed Services contract (such steps to include matters relating to contracts, leases and other relevant legal documentation and pensions arrangements) including:

- *Refuse, street cleansing vehicle workshop*
- *Parks and open spaces*
- *Property maintenance and property cleaning*
- *Community link and home to school transport*
- *Grounds and trees maintenance "*

4.5 As a result of this Cabinet decision from January 2018 to March 2018 a work plan was devised which determined the following actions:-

- (a) **Waste and Recycling Collection, Street Cleansing and Fleet Management** would be subject to procurement (Lot 1)
- (b) **Parks, Trees and Open Spaces** would be subject to procurement (Lot 2)
- (c) **Property Maintenance** would be subject to Joint Venture with Norfolk Property Services (Lot 3)
- (d) **Building Cleaning** would be subject to contracted ESPO Framework through mini competition (Lot 4)

(e) **Community Link and Home to School Transport** would be brought in house and then reviewed to determine the best arrangement for these services.

4.6 By the time the Leader made his announcements, Lot 1 (Waste and recycling collections, Street cleansing and Fleet Management) had not been put out to tender although Lot 2 (parks, trees and open spaces) had been put out to tender. In his speech to Annual Council, the Leader set out, in brief the reasons why a rethink of the arrangements for the provision of waste and street cleansing services had taken place. In essence he explained that the services concerned were important to the residents of the city and that greater control over the quality and performance of those services was required. He also reflected his desire to see every penny spent devoted to providing high quality waste and cleansing services. These factors, plus the ability for a LATCo to trade and earn income for the Council to support its services, led the Leader to conclude that such a company arrangement should be considered for the provision of these services.

4.7 In addition to the above a LATCo model is becoming more prevalent in local government and would allow us to adopt a commercial culture and compete for external commercial work on a level playing field with commercial operators. The advantages can be described as:

- The ability to trade in the wider market
- Generation of economies of scale and greater efficiency
- Returning revenue to the Council through profitability
- Creation of a more commercial culture
- Retaining people knowledge inside the Company
- Retaining more control and a greater public sector ethos
- Safeguarding jobs via diversifying work and contracts

4.8 In relation to other services provided by Amey, further consideration of the arrangements for their provision has taken place since Annual Council. As the decision of Cabinet on 18 December 2017 allows consideration of “alternative provisions for all services currently provided under the EMS contract,” alongside waste and cleansing services, the arrangements for the provision of these services under Lots 2, 3 and 4 are also being considered. Whilst tenders for Lot 2 (Parks, Trees and Open Spaces) are being evaluated, it is with the understanding that the Council is not bound to accept the lowest or any bid. If the Council determines, through its investigation that a LATCo is the best option, then the cost of providing services by the LATCo as opposed to the costs of the winning bid can be compared before making a decision as to the future delivery of these services.

4.9 Finally negotiations have been taking place with Amey on the principle of extending the contract (due to expire by mutual agreement on 31 August) to allow further investigation of the options above. Amey have agreed to extend the contract at a cost to be agreed and this issue, together with the outcome of the investigations for a LATCo will be brought back to Cabinet later this summer.

5. CONSULTATION

5.1 Initial consultation with staff and unions has taken place, as has initial discussions with Cabinet Members. However a full and formal consultation exercise will be undertaken with all stakeholders.

6. ANTICIPATED OUTCOMES OR IMPACT

6.1 The anticipated outcome is one that allows a smooth transfer of services upon termination of EMS/Amey contract which would provide better value and control than previously considered.

7. REASON FOR THE RECOMMENDATION

- 7.1 This report seeks approval to further investigate service delivery options following the 2017/18 budget decision to terminate the current EMS contract as the contract is no longer fit for purpose. Exploration of this option is considered necessary in order to ensure that the Council has considered all options for a better service delivery.

8. ALTERNATIVE OPTIONS CONSIDERED

These have previously been considered by Cabinet as described in section 4.3 of this report.

9. IMPLICATIONS

9.1 Financial Implications

These will be covered in the Business Case should exploration of the LATCo be approved.

9.2 Legal Implications

A Local Authority Trading Company can be created under the General Power of Competence introduced by The Localism Act 2011 which explicitly gives councils the power to do anything that an individual can do which is not expressly prohibited by other legislation. This activity can include charging or it can be undertaken for a commercial purpose, and could be aimed at benefiting the authority, the area or its local communities.

The Trading Company would need to be “Teckal” compliant to gain “Teckal” exemption from needing to compete with other companies under procurement legislation. “Teckal” refers to originating legal case which has since been confided within Article 12 (1-6) of the EU Directive 2014/24 and Public Contract Regulations 2015.

Internal and external legal advice will be required in formulating a business case supporting the creation of such a wholly owned Trading Company.

9.3 HR & Pension Implications

A total of 402 employees are currently employed by EMS and will be affected by any decision to create a LATCo. Detailed consideration will need to be given to the staffing and pension implications of any proposal going forward.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985.

- 10.1 None.

11. APPENDICES

- 11.1 None.